

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WILLIAM LEE THIETJE,

Petitioner,

Civil No. 08-958-AA

v.

ORDER

MARK NOOTH,

Respondent.

AIKEN, District Judge.

Petitioner, an inmate in the custody of the Oregon Department of Corrections, filed a petition for habeas corpus relief under 28 U.S.C. § 2254 challenging his convictions on charges of rape, sodomy and kidnapping on various grounds.

The only claim remaining is Ground One of petitioner's Amended Petition (#33). See, Order (#38) entered January 7, 2010.

In Ground One, petitioner claims that his Fifth, Sixth and Fourteenth Amendment rights were violated when he "was convicted by a less than unanimous jury on Counts 1 through 3." Amended Petition (#33), p. 4.

The United States Supreme Court specifically addressed Oregon's statute permitting jury convictions by 10 out of 12 jurors in Apodaca v. Oregon, 406 U.S. 404 (1972). In that case, the Court held that the Oregon system was constitutional, explaining: "A requirement of unanimity, however, does not materially contribute to the exercise of commonsense judgment. As we said in *Williams*, a jury will come to such a judgment as long as it consists of a group of laymen representatives of a cross section of the community who have the duty and the opportunity to deliberate, free from outside attempts at intimidation, on the question of defendant's guilt." Id., at 410-411.

Thus, the non-unanimous verdicts in petitioner's trial did not violate any clearly established Supreme Court precedent and fails to establish entitlement to habeas corpus relief under 28 U.S.C. § 2254.

Summary: Petitioner's Ground One fails as a matter of law; petitioner's Ground Two is procedurally defaulted; petitioner's Ground Three fails on the merits. Petitioner's Amended Petition (# 33) is denied. This proceeding is dismissed.

IT IS SO ORDERED

DATED this 20 day of April, 2010.

s/ Ann Aiken

Ann Aiken

United State District Judge